

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

17 CR 649 (GBD)

TERRELL POLK,  
JAMEL MOSS,  
KEVIN CORBETT,  
TIMOTHY SMITH,

Defendants.

Decision

New York, N.Y.  
July 12, 2018  
10:15 a.m.

Before:

HON. GEORGE B. DANIELS

District Judge

APPEARANCES

GEOFFREY S. BERMAN

United States Attorney for the  
Southern District of New York

MICHAEL K. KROUSE

Assistant United States Attorney

RICHARD LIND

Attorney for Defendant Polk

JUDITH VARGAS

Attorney for Defendant Moss

CESAR DE CASTRO

Attorney for Defendant Corbett

STEVEN G. BRILL

Attorney for Defendant Smith

1 (Case called)

2 THE COURT: Good morning. I received all the  
3 submissions with regard to the motion and hearing. Does the  
4 defense wish to be heard any further with regard to the motion?

5 MR. LIND: Briefly, Judge. Once again, I think that  
6 the government's arguments and evidence really doesn't pass the  
7 smell test here. I'll give you an example, and I think counsel  
8 for Mr. Smith went into this as well.

9 The government argues Officer Spina sees the car at  
10 the gas station, he notices there is a missing license plate,  
11 he notices there are tinted windows: two grounds, according to  
12 the government, to stop the car and see what happens.

13 They don't approach the car. They don't go up to the  
14 car. They don't drive the police vehicle up there to stop it.  
15 They just let it go. If they had actually seen that, if they  
16 had actually seen what Officer Spina testified to, I think  
17 that's what they would have done. Instead, they are following  
18 this car all the way while the car is driving.

19 If you look at the complaint, the first paragraph  
20 talks about the deponent, Officer Spina, observed the defendant  
21 seated behind the steering wheel. He talks about the  
22 description of the car and that the defendant was observed  
23 seated behind the steering wheel of said motor vehicle while  
24 said vehicle was in motion at the public location, a public  
25 roadway.

1           There was no mention, of course, of anything about a  
2           gas station, anything about a license plate, anything about  
3           tinted windows, anything about marijuana, anything about an  
4           open warrant. The only thing that is mentioned is at the end,  
5           after my client has been arrested, not before he is arrested,  
6           there is some mention about the suspended license, which is the  
7           only Vehicle and Traffic Law violation cited in the complaint.  
8           And that was after he was arrested, not before.

9           I think there is no corroboration for his testimony.  
10          The only slight corroboration is that when they vouchered the  
11          materials, there was only one license plate. There is no  
12          reference to that at all in the complaint.

13          Of course, all this was the fault of the ADA. He puts  
14          down an 18-year conviction. The only thing missing from the  
15          complaint is the Yankee score from that night. All the rest of  
16          the stuff was trivia, Judge, nothing that would corroborate the  
17          testimony of Officer Spina.

18          I think the government has fallen far short of their  
19          burden in this case, and I would move to suppress. Thank you.

20          THE COURT: Did you want to be heard further, Mr.  
21          Krouse?

22          MR. BRILL: I will rest on our submission, your Honor,  
23          and I join in co-counsel's arguments as well.

24          MR. KROUSE: Briefly, your Honor. The government  
25          submits that the Court should credit the uncontradicted

1 testimony of Officer Spina. There are really two questions for  
2 the Court, as the Court knows: whether there is probable cause  
3 to conduct the stop and whether there was probable cause to  
4 search or whether there was another grounds that justified the  
5 search.

6 As to the first question, whether there was proximate  
7 cause to conduct the search, Officer Spina's uncontradicted  
8 testimony was that he during the vehicle patrol saw a vehicle  
9 that he knew from prior briefings was associated with Terrell  
10 Polk, that he knew Mr. Polk had an open warrant for his arrest  
11 and had a suspended driver's license, and that he noticed the  
12 car had only one license plate and excessively tinted windows.  
13 They waited. Once the car exited the gas station and started  
14 driving, they pulled over the car.

15 The government submits the uncontradicted testimony of  
16 Officer Spina establishes that they had either reasonable  
17 suspicion to stop the car or probable cause to stop the car  
18 based only on the tinted windows, the single license plate, and  
19 the fact that they had reason to believe that Mr. Polk was the  
20 person driving that vehicle.

21 As to the second question, whether there is probable  
22 cause to conduct the search, Officer Spina's testimony, which  
23 is uncontradicted, is when he went to the vehicle, Mr. Polk was  
24 driving and there was a smell of marijuana coming from the  
25 vehicle. Mr. Polk was placed under arrest for driving with a

1 suspended license and for his outstanding arrest warrant, and a  
2 search was conducted.

3 That search was justified either for probable cause to  
4 believe that there was contraband in the vehicle, namely, the  
5 marijuana, or based on officer safety, because Mr. Corbett and  
6 Mr. Smith were still not arrested at that point. It's  
7 justified, under Michigan v. Long, to conduct a security search  
8 of the interior of the vehicle, which is what the officer did.

9 Moreover, even if those two grounds weren't  
10 sufficient, Officer Spina testified that the standard procedure  
11 for the NYPD in a case where a driver like Mr. Polk was  
12 arrested for driving with a suspended license or because of his  
13 open arrest warrant would be to take the vehicle back to the  
14 precinct and conduct an inventory search. The government  
15 submits it would have been inevitable that the inventory search  
16 would have discovered the loaded firearm in the backseat.

17 For all those reasons, your Honor, the government  
18 submits that the defense motions to suppress should be denied.

19 THE COURT: Let me address it this way. First, let me  
20 address some issues that weren't the subject of the hearing.  
21 Originally, the motion was broader. There was a motion to  
22 suppress the evidence seized pursuant to a search warrant. I  
23 would assume that that motion is either withdrawn or abandoned.  
24 In any event, there is no indication that there is any  
25 legitimate basis to attack the warrant, as it was issued by the

magistrate judge. Therefore, that search pursuant to a warrant is a legal search.

Nothing has been presented either in the papers or testimony or argument that would indicate that that search pursuant to a lawfully issued warrant by the magistrate judge based on probable cause was an invalid warrant. The warrant authorized the search.

Substantively, the officers searched the areas that would be authorized by that warrant and found material that they had the right to seize upon properly searching the apartment and searching the areas that one believed that the materials authorized to be searched for in the warrant might be located. And any other material, unlawful contraband, that the officers might come across in that search of the areas authorized to be searched would be lawfully seized pursuant to the lawfully issued warrant.

Also, the government referenced in their footnote in their papers that Mr. Smith originally moved to suppress the statements that he made at the time of his arrest based on a failure to provide Miranda warnings. The government has indicated that the government subsequently obtained the videotape of Mr. Smith's interview from the NYPD, which indicates that Mr. Smith waived his Miranda warnings and properly provided a copy of the recording to Smith's attorney. That video clearly indicates that Mr. Smith was provided his

1 Miranda warnings.

2 Mr. Brill, I didn't hear any dispute with regard to  
3 that. I haven't seen the video, but it is my understanding the  
4 video was provided to you.

5 MR. BRILL: Yes. On the one hand, it was not the  
6 subject of the hearing. But the fact is that I did receive  
7 that video. I will acknowledge and concede that Miranda  
8 warnings were provided to Mr. Smith. So with respect, we will  
9 withdraw that portion of the motion.

10 THE COURT: With regard to the motion, there are  
11 several issues that were raised. I am going to deny the  
12 motions of the defendants based on the following findings of  
13 act and conclusions of law.

14 At the hearing, Officer Joseph Spina testified. He is  
15 a six-year veteran of the New York City Police Department. He  
16 was part of a citywide anti-crime team. He testified that he  
17 had worked for four years as an officer at the 44th Precinct.  
18 On August 26, 2015, he was on patrol in an unmarked vehicle  
19 with another officer.

20 They had information that Mr. Polk had been involved  
21 in this violent activity and shootings and robberies. They  
22 were also in possession of information that Mr. Polk drove a  
23 four-door Chrysler sedan. They were also given information  
24 that Mr. Polk had a suspended license and had an open warrant  
25 for his arrest. And they had seen pictures of Mr. Polk so that

1 they would recognize Mr. Polk.

2           They began their tour at 6:30 p.m. At approximately  
3 11:45 p.m. they saw a vehicle that specifically matched the  
4 vision of Mr. Polk's vehicle. It was parked in a gas station.  
5 They observed that it had one rear license plate and had dark  
6 tinted windows and was missing the second license plate.

7           Most of the facts I recite that were testified to by  
8 the officer at the hearing are not substantially in dispute.  
9 There is an argument that the officers did not have the  
10 information that Officer Spina testified that he had and it was  
11 not credible as to whether or not he observed the rear license  
12 plate, observed one license plate and dark tinted windows.

13           I have to point out that that testimony comes in  
14 totally uncontradicted. As a matter of fact, not only is there  
15 no testimony at the hearing that contradicts the testimony of  
16 the officer on that issue, even the defendants' affidavits do  
17 not contradict that testimony. The argument is that the Court  
18 should simply reject that testimony as being incredible even  
19 though there is no sworn testimony or affidavit from any  
20 defendant that claims that the car had two license plates or  
21 that the car didn't have dark tinted windows.

22           The affidavit doesn't necessarily reference one way or  
23 the other the tinted windows, but Mr. Smith's affidavit does  
24 indicate that the windows were closed and that when the car was  
25 stopped, not inconsistent with Officer Spina, they were told to



1 roll down the windows after the car was stopped.

2 The car pulled out of the gas station, the officers  
3 believing that it was Polk. It is fair and clear that they  
4 were more concerned about the possibility that they could  
5 locate Polk and that this was Polk than they were with regard  
6 to the traffic violations. However, those traffic violations  
7 did exist, and there is no witness who contradicts him or gives  
8 any other scenario other than that there was a missing license  
9 plate and dark tinted windows.

10 The officers, observing that, had a lawful, legal  
11 reason to stop the vehicle. As I say, there is a difference  
12 between a pretext and an officer's looking for a lawful  
13 opportunity stop a vehicle.

14 In this case, even though it is clear to me that their  
15 main concern was whether or not Mr. Polk, who they were aware  
16 was suspected in shootings and robberies and had an open  
17 warrant and also a suspended license, being given the  
18 opportunity to stop the car for the traffic infraction could in  
19 their mind give them the opportunity to see if they found Mr.  
20 Polk. That turned out to be the case.

21 Officer Spina approached the driver's side. His  
22 partner approached the passenger side. Officer Spina testified  
23 that the most significant, if not the only genuine dispute in  
24 this case is whether or not there was a smell of marijuana  
25 emanating from the automobile. That is only put at issue

1 because of the affidavits. There was no testimony at the  
2 hearing that contradicted the officer that when he got to the  
3 passenger side, he smelled marijuana when the window was  
4 opened.

5 He recognized Mr. Polk and he saw that there were two  
6 other passengers, one in the front seat and one in the backseat  
7 with Mr. Polk. The officer asked Polk for his license and  
8 registration. He already had information that his license was  
9 suspended and that Mr. Polk was probably driving without a  
10 valid license and would not be able to produce such a license.  
11 In fact, Mr. Polk was not able to produce a valid driver's  
12 license. He arrested Mr. Polk, asked him to step out of the  
13 car and arrested Mr. Polk for driving that vehicle without a  
14 valid license.

15 The two other individuals in the car were also asked,  
16 Corbett and Smith, to step out of the car. A quick search was  
17 done of the cabin area of the car. In the backseat armrest the  
18 officers saw a loaded weapon with ammunition. Upon seeing the  
19 gun in the car, they arrested all three of the individuals who  
20 had been asked to step out of the car, arrested the other two  
21 along with Mr. Polk, who was already under arrest.

22 The car was seized and taken to the precinct, and a  
23 further inventory search was done at the precinct. Also, when  
24 Mr. Smith was searched, a quantity of marijuana was recovered  
25 from Mr. Smith. The firearm, rounds of ammunition, and the

1 marijuana were vouchered as evidence against the defendant.

2           Regarding that scenario, I find that the testimony  
3 that the officer gave was not only reasonable but in substance  
4 it was not even contradicted. There is no testimony that  
5 contradicts any of his testimony. The only thing that is  
6 inconsistent with any of his testimony is that the officer said  
7 that he smelled marijuana emanating from the car and Mr.  
8 Smith's affidavit says that there was no smell of marijuana.

9           I find that Officer Spina's testimony on all the  
10 issues to be credible. There is no reason to find, based on  
11 Officer Spina's testimony alone, uncontradicted, that any of  
12 the facts he testified to, which were not disputed, are somehow  
13 untrue and should be rejected.

14           The smell of marijuana, which is only contradicted by  
15 the affidavit, does not give rise to rejecting Officer Spina's  
16 testimony on that issue. Besides, that even if I were to not  
17 credit the smell of marijuana, the overall circumstances that  
18 were faced by Officer Spina provided a legal, lawful basis for  
19 Officer Spina and his partner to stop the vehicle, to arrest  
20 Mr. Polk, to further search the area of the car, and, upon  
21 finding the gun in the car, to arrest all of the occupants in  
22 the car.

23           First of all, there was more than reasonable  
24 suspicion, there was probable cause to believe that they  
25 observed a traffic infraction. Not only was there probable

1 cause that they observed a traffic infraction by seeing a car  
2 with dark tinted windows, which would constitute an infraction,  
3 and only having one license plate, not only did that provide  
4 probable cause for them to stop and charge the driver, they had  
5 more information and reasonable suspicion along with that to  
6 believe that Mr. Polk was in this car. They had information  
7 that Mr. Polk had an open warrant and had a suspended license  
8 and had been involved in violent activity, had been in  
9 possession of weapons and had been involved in shootings and  
10 robberies.

11 So, upon seeing the missing license plate and the dark  
12 tinted windows, they had the right to stop that automobile to  
13 either issue a ticket or to arrest the driver, particularly as  
14 the driver turned out to be who they thought it was, Mr. Polk,  
15 who had an outstanding warrant and a suspended license. So  
16 they had a lawful basis, a legitimate basis, to stop this  
17 vehicle.

18 Upon stopping this vehicle, they recognized Mr. Polk.  
19 He was driver of the car. They knew he had a suspended  
20 license. He could not produce a lawful, valid license. There  
21 was also a warrant for his arrest, which in and of itself  
22 provides probable cause for the officers to arrest him at that  
23 time, knowing that he had an open warrant for his arrest.

24 With the traffic infraction, his suspended license,  
25 and the fact that there was an open warrant for his arrest,

1 once they recognized Mr. Polk, they had a lawful reason and  
2 basis to place him under arrest at that time. Having had  
3 reason to stop the car and having had probable cause to arrest  
4 Mr. Polk, Mr. Polk was taken out of the car and he was  
5 arrested.

6 The question then is whether or not there was a basis  
7 for searching the car further. Although Mr. Polk was now under  
8 arrest, there were two other individuals in this car who were  
9 asked to step out of the car. I find credible his testimony  
10 that he smelled marijuana. That in and of itself would give  
11 him a reasonable basis to further search the areas of the car.

12 Even beyond the smell of marijuana, the officers  
13 reasonably under these circumstances had a right for their own  
14 safety, given the violent nature of Mr. Polk's reputation and  
15 given the fact that there were two officers and three  
16 individuals, even though all of the individuals were outside of  
17 the car at this point, it was reasonable for the officers to do  
18 a quick search of the interior of the car for their own safety  
19 in order to ensure that one of these individuals did not get  
20 back into this car and retrieve this weapon and use this weapon  
21 against them, particularly knowing the additional information  
22 that they had that there was a good chance that Mr. Polk might  
23 be trafficking arms, since he was already known to be involved  
24 in violent activity and known to be involved in shooting and  
25 robbery.

1           Although the other two at that point were not under  
2       arrest, it was appropriate for the officer to search the  
3       passenger area of the car for marijuana because they smelled  
4       marijuana. But even if that were not the case, given this  
5       automobile stop and the circumstances and the individual that  
6       they were placing under arrest, and not knowing anything about  
7       his two other associates in the automobile, it was reasonable  
8       for the officers, before they took any further action with  
9       regard to the other two individuals, to do a quick search of  
10      the car for their own safety.

11           That search of the cabin area of the car quickly  
12      located a loaded firearm in the armrest of the car. At that  
13      point, once the firearm was located pursuant to that lawful  
14      search, located in the passenger area of the car, all three  
15      individuals were placed under arrest who were in that car for  
16      jointly possessing that weapon. They were arrested and all  
17      three transported back to the precinct.

18           Alternatively, the government argues, also legally  
19      appropriately, that given the fact that Mr. Polk was the driver  
20      of the car, that he was being arrested, that he did not have a  
21      valid driver's license, that the car would have been I am  
22      pounded, taken back to the precinct, and an inventory would  
23      have been done at the precinct.

24           An inventory search was in fact done at the precinct.  
25      Clearly, an appropriate lawful inventory search, if it had been

1 conducted back at the precinct with or without the initial  
2 search, discovery of the weapon in the car would have been  
3 inevitable pursuant to the inventory search. Therefore, they  
4 would have had a lawful basis to search the automobile once  
5 they arrested the driver of the automobile for the traffic  
6 infraction and for driving without a license.

7         There was a further basis to arrest Mr. Smith after  
8 the officer who testified he smelled the marijuana in fact  
9 recovered marijuana from the person of Mr. Smith in the  
10 vehicle. Based on the testimony at the hearing, which came in  
11 substantially uncontradicted and was credible in all respects,  
12 the officers had both a reasonable suspicion and probable cause  
13 to stop this vehicle.

14         Once the vehicle was stopped and they recognized Mr.  
15 Polk, who was driving the car on a suspended license and they  
16 had an open warrant for his arrest, they had the right to  
17 arrest him. The only appropriate course of conduct would have  
18 been to arrest Mr. Polk, which they immediately did.

19         Having smelled marijuana and having three individuals  
20 there at the car, Mr. Polk and two other individuals, it was  
21 appropriate both to search the car further for at least  
22 marijuana and to search the car for a possible weapon that one  
23 of these individuals might get access to, for their own safety.

24         Beyond that, since they were arresting Mr. Polk, who  
25 was the driver and possessed the car, upon that arrest they

1 would have seized the automobile, which they did, and they  
2 would have taken it back to the precinct, which they did, and  
3 would have conducted an inventory search, which was done at  
4 the precinct. Even if they had not found the gun before they  
5 arrested Mr. Polk, they would have clearly found that gun in  
6 the inventory search. So there would be no basis to suppress  
7 that gun as evidence lawfully found and seized at the time of  
8 their arrest.

9           Based on those findings of fact and conclusions of  
10 law, I am going to deny Mr. Polk's and Mr. Smith's motions in  
11 their entirety, finding that the stop of the car, the search of  
12 the car, and the retrieval of the evidence to be offered  
13 against the defendants at a trial was lawful and there is no  
14 legal basis to suppress any of the evidence retrieved as a  
15 result of the stop, search, and arrest of the defendants.

16           At this point, how does the government wish to  
17 proceed?

18           MR. KROUSE: Your Honor, the government will put on  
19 the record that we have extended plea offers to three of the  
20 four defendants: Mr. Corbett, Mr. Moss, and Mr. Smith. The  
21 trial date is currently set for September 24th, I believe.

22           The government would renew its request for an earlier  
23 trial date if it pleases the Court. If the Court's  
24 availability is amenable to that and if the defense counsel who  
25 previously said that they would potentially be able to move the



1 trial to an earlier date are able to do so, the government  
2 would wish to proceed to trial in either August or early  
3 September.

4 THE COURT: What is the defense's position?

5 MR. De CASTRO: Judge, as I mentioned at a prior  
6 conference, I have a September 10th trial already scheduled in  
7 the Eastern District before Judge Brody. But before that, I  
8 have an August 27th scheduled trial before Judge Failla. With  
9 all candor, I would like those cases to be resolved, but they  
10 have not been. The August 27th looks like it's happening, and  
11 September 10th I'm still not sure of.

12 THE COURT: At this point it is your intent and your  
13 client's intent to go to trial on that date?

14 MR. De CASTRO: At this point we have not accepted the  
15 government's offers, but we are discussing it. I plan on  
16 giving the government an answer in the next couple of weeks.  
17 You will know very soon whether we are still part of the  
18 calculus.

19 THE COURT: What is the likelihood that others are  
20 going to be at this trial and the availability?

21 MR. LIND: Judge, speaking for Mr. Polk, I would like  
22 to move it forward a week, to the 17th of September. Judge  
23 Gardephe set a date for October 1st in another case. I told  
24 him I'm on trial before your Honor. It is a multidefendant  
25 case. Maybe something will happen. I don't think anything is

1 going to happen in that case. Right now, considering what the  
2 government offered my client, I'm pretty certain we are going  
3 to trial. So I would like to move it forward to September 17th  
4 because of the October 1st trial date.

5 MR. KROUSE: What about September 4th, your Honor, the  
6 day after Labor Day? To be clear, for the record, the  
7 government hasn't made any offer to Mr. Polk.

8 MR. LIND: We'll talk about it.

9 THE COURT: That doesn't tell me whether or not he is  
10 going to plead guilty or go to trial on the charge. I have a  
11 trial already scheduled for September 4th. Ms. Vargas, what is  
12 your situation?

13 MS. VARGAS: Your Honor, on behalf of Mr. Moss, we  
14 have been extended an offer by the government, which I have  
15 discussed extensively with Mr. Moss. He is not inclined to  
16 accept the offer. I have discussed it on many occasions with  
17 him. So we will, I believe, be going to trial. September 4th  
18 not a good date for me, but your Honor says he is on trial  
19 anyway.

20 THE COURT: Mr. Brill.

21 MR. BRILL: Mr. Smith, there has been an offer  
22 extended to him. He is in possession of it. I plan to speak  
23 further to Mr. Smith about that. At this point he has not  
24 accepted it. As it stands today, I'll be part of that trial as  
25 well.

1 THE COURT: Your availability is?

2 MR. BRILL: Mr. Lind suggests the 17th. That's fine  
3 with me.

4 THE COURT: Let me see what else I have on my calendar  
5 for those two weeks. At this point the government has  
6 approximately how many witnesses and it will take approximately  
7 how long to present?

8 MR. KROUSE: Your Honor, it depends a bit on who goes  
9 to trial. I wouldn't anticipate the trial lasting more than  
10 two weeks. I know your Honor is on trial for September 4th and  
11 I'm not sure how long that trial will last, but September 11th  
12 is another potential date. Rosh Hashanah is September 10th.

13 THE COURT: Rosh Hashanah is the 10th and Yom Kippur  
14 is the 18th.

15 MR. KROUSE: Yes, your Honor. If we started on the  
16 11th and didn't sit on Yom Kippur, that would be preferable  
17 both for Mr. Lind's schedule and the government's schedule,  
18 since Mr. Lind stated he has an October 1st trial and this  
19 trial would probably last about two weeks.

20 THE COURT: I know we had originally had a couple of  
21 days earlier and tried to avoid the holiday, and I pushed it  
22 back to the 24th. With the holidays and my trial schedule, it  
23 is awkward to find a solid two weeks in September.

24 Who is definitely going to be out on the holiday?

25 MR. BRILL: Yom Kippur is a definite for me, the day.

1 I'm not sure what day that is.

2 THE COURT: I think that's the 19th.

3 MR. BRILL: Any other day is open.

4 THE COURT: Rosh Hashanah is not a problem?

5 MR. BRILL: That's right.

6 THE COURT: For anyone else? It may be a problem for  
7 jurors if we pick a jury.

8 Mr. Krouse, can you give me a little better idea about  
9 how many witnesses you might call and what is the quickest you  
10 think you can do this?

11 MR. KROUSE: Your Honor, depending on stipulations,  
12 the government would anticipate somewhere in the vicinity of 15  
13 to 20 witnesses. Many of them would be relatively short.  
14 There will probably be two to three cooperating witnesses who  
15 would be testifying, with one main cooperating witness, who  
16 would be probably the longest. I can anticipate, depending on  
17 how many defendants go to trial, that the case could come in in  
18 a week as well. I'm saying two weeks just to be safe.

19 THE COURT: This isn't ideal, but I'm leaning toward  
20 starting the 10th and not sitting the 19th if we are still on  
21 trial by the 19th.

22 MR. De CASTRO: Judge, that is assuming that my client  
23 is out and I'm not on trial in the Eastern District. My trial  
24 in the Eastern District starts on the September 10th.

25 THE COURT: And ends when?

1 MR. De CASTRO: I would anticipate it would be one  
2 week. Your Honor, I am the second or perhaps the third lawyer  
3 on that case, and that client has asked that I be removed just  
4 recently. I'm going to see Judge Brody this week to see if I'm  
5 going to still remain on the case and if we are trying it. I  
6 will know at the end of this week. If I'm off the case, then I  
7 will be free that day and it's not a problem.

8 THE COURT: That's assuming that your client and our  
9 others go to trial.

10 MR. De CASTRO: That's correct.

11 THE COURT: Let's say for now the 10th. If we have to  
12 push it back a week or push it back to where we were before,  
13 we'll do that.

14 I would like to have one other conference next month.  
15 If there are going to be dispositions, whatever dispositions  
16 are going to be done, I would like to see them done in the next  
17 30 days. When we meet on the next date, I'm going to assume  
18 whoever is here on that date is going to trial. If you work  
19 out any dispositions, contact my chambers right away, and we'll  
20 bring those individuals in and dispose of those cases before  
21 the next conference date. Whoever is left on that date, that's  
22 who I'm assuming is going to trial.

23 If you are out of the other case by then -- when will  
24 you know that?

25 MR. De CASTRO: I should know this week or early next

1 week. Judge Brody just scheduled the hearing. I can let the  
2 Court know right when I know about that. I think in the next  
3 two weeks I will know regarding a plea in this case.

4 THE COURT: I am going to schedule it now for  
5 September 10th. I am going to schedule a final pretrial  
6 conference for August 16th at 10 o'clock. If there are  
7 dispositions to propose that the parties work out, let me know  
8 before that time so I can bring those parties in to do the  
9 dispositions between now and the 16th.

10 As I say, whoever is here on the 16th, I'm going to  
11 assume that's who's going to trial, and we will see whether or  
12 not the 10th is still a viable date or we have to make some  
13 other adjustment.

14 I will commit to not sitting on the 19th. As long as  
15 I do that for the jurors who are chosen, then we shouldn't have  
16 a problem. Anybody who is going to be celebrating the holiday  
17 before that, Rosh Hashanah, is not going to be here anyway,  
18 they are not going to be in court. So we can pick a jury on  
19 the 10th, start the case on the 10th. We'll see whether or not  
20 we get the case in before Yom Kippur. If not, we'll skip that  
21 day and then continue the next day.

22 Let's try to firm up whether there are going to be any  
23 dispositions, who is going to here on the 16th at 10 o'clock.  
24 At that point in time, if everyone is still available for that  
25 day, it will be September 10th for trial. Otherwise, we'll see

1 to what extent we have to move it sometime within 30 days --  
2 the next week, the week after, or the first week of October, if  
3 we can -- to try the case.

4 Is there anything further by the government today?

5 MR. KROUSE: No, your Honor. Thank you.

6 THE COURT: Anything further from the defense?

7 MS. VARGAS: No, your Honor.

8 MR. De CASTRO: No, your Honor.

9 MR. BRILL: No, your Honor.

10 MR. LIND: No, your Honor.

11 THE COURT: I will see you on August 16th or before  
12 then if you have a disposition to propose. Thank you.

13 (Adjourned)